International Covenant on Civil and Political Rights

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Human Rights Committee

Decision adopted by the Committee under the Optional Protocol, concerning communication No. 2232/2013*, **

Communication submitted by:	A.S. (represented by counsel, Irina Biryukova)
Alleged victim:	The author
State party:	The Russian Federation
Date of communication:	12 January 2013 (initial submission)
Document references:	Decision taken pursuant to rule 97 of the Committee's rules of procedure, transmitted to the State party on 15 January 2013 (not issued in document form)
Date of adoption of decision:	19 July 2018
Subject matter:	Extradition to Uzbekistan
Procedural issue:	Non-exhaustion of domestic remedies
Substantive issues:	Torture, unlawful detention
Articles of the Covenant:	7, 9, 14 (3)
Articles of the Optional Protocol:	2, 5 (2) (b)

1.1 The author of the communication is A.S., a national of Uzbekistan born in 1981. He claims that the Russian Federation has violated his rights under articles 9 and 14 (3) of the Covenant and would violate his rights under article 7 of the Covenant if he is extradited to his native Uzbekistan. The Optional Protocol entered into force for the State party on 1 January 1992. The author is represented by counsel.

1.2 When submitting the communication on 12 January 2013, the author asked the Committee to consider issuing interim measures pursuant to rule 92 of its rules of procedure to prevent his extradition to Uzbekistan. On 13 January 2013, the Committee, acting through its Special Rapporteur on new communications and interim measures, denied this request.

The facts as submitted by the author

2.1 The author was arrested in Moscow on 13 January 2012 based on an extradition request from the authorities in Uzbekistan. In Uzbekistan, the author had been charged with

* Adopted by the Committee at its 123rd session (2–27 July 2018).

** The following members of the Committee participated in the examination of the present communication: Tania Maria Abdo Rocholl, Yadh Ben Achour, Ilze Brands Kehris, Sarah Cleveland, Ahmed Amin Fathalla, Olivier de Frouville, Christof Heyns, Bamariam Koita, Marcia V.J. Kran, Duncan Laki Muhumuza, Mauro Politi, José Manuel Santos Pais, Yuval Shany and Margo Waterval.

two crimes: conclusion of a knowingly unprofitable transaction, committed by a group of persons, causing significant loss to the financial interests of Uzbekistan, and theft by way of misappropriation or embezzlement. By a decision of the Moscow subway system prosecutor, the author was detained for two months pending his extradition to Uzbekistan.

2.2 The author's detention was then extended by the Cheryomushki district court on 12 March 2012 for an additional four months. The author filed an appeal to challenge that decision, which was rejected on 9 April 2012 by the Moscow City Court. The Cheryomushki district court, by its decision dated 12 July 2012, extended the author's detention for an additional six months. That decision was also appealed and that appeal was rejected on 1 August 2012.

2.3 The author is a law-abiding citizen who never intended to hide from the authorities in Uzbekistan. After arriving in the Russian Federation, he duly registered himself with the local immigration authorities and received a temporary residence permit. He also has a certificate, dated 9 November 2010, stating that he is not wanted for any crimes in Uzbekistan. The author states that he has nothing to do with the crimes that he has been charged with and that he is being targeted for other reasons.

2.4 The author belongs to a "special social group" which is targeted by "groups of citizens" in Uzbekistan who are nationalists. He has Jewish ancestry on his mother's side and therefore he has suffered discrimination. For example, he was not admitted to a local university, although he received sufficiently good results in the entry exam to be accepted. His family was threatened and told to leave Uzbekistan. His house was attacked by people "throwing Molotov cocktails".[1]

2.5 Concerned about their safety, the author's family decided to move to the Russian Federation, especially since Russian was the native language of the family. When he left Uzbekistan, the author was unaware that the local authorities had initiated criminal proceedings against him. The prosecution against him was initiated to force him to provide information on other persons who had participated in contracts and agreements with the author. To achieve that goal, the authorities "would use any means, including torture".

2.6 Upon his arrival in the Russian Federation, the author did not request asylum, because he was concerned for the safety of some members of his extended family who remained in Uzbekistan. Instead, he applied to a federal programme for the relocation of citizens who were born in the Soviet Union, to obtain his residence permit.

2.7 The request to extradite the author was received by the Prosecutor General's Office of the Russian Federation on 27 January 2012. On 21 September 2012, the deputy Prosecutor General issued a decision to extradite the author to the Uzbek authorities. The author appealed this decision, claiming that he would risk torture if extradited. On 12 November 2012, the Moscow City Court rejected the author's appeal. That decision in turn was appealed to the Supreme Court of the Russian Federation. On 10 January 2013, the Supreme Court also rejected the author's claims.

2.8 On 21 February 2012, the author requested that the Russian authorities grant him refugee status. On 29 May 2012, the Moscow city migration authorities rejected his request. The author then filed a complaint to Basmanny district court, which rejected the author's appeal on 19 December 2012. In his additional submission dated 27 January 2013, the author submits that he was extradited to Uzbekistan on 15 January 2013.

The complaint

3.1 The author claims that if he is returned to Uzbekistan, he faces a risk of torture at the hands of the Uzbek authorities. Since 2003, the United Nations has indicated that torture in Uzbekistan is "systematic".[2] Non-governmental organizations, such as Human Rights Watch[3] and Amnesty International, have reported numerous allegations of torture, including

[1] The author provides no further details regarding the alleged incidents.

[2] The author refers to a 2003 report by the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment.

[3] The author refers to a 2009 report by Human Rights Watch.

an instance when a person was "boiled alive".[4] The Ministry of Foreign Affairs of the Russian Federation also concluded in 2009 that the criminal justice system was based on forced confessions and that the defendants who had been prosecuted for politically motivated charges had been mistreated. The author therefore claims that if he is extradited to Uzbekistan, the authorities there will detain and torture him.

3.2 The author further claims that his detention has been excessively prolonged and violates his rights under articles 9 and 14 (3) of the Covenant. The Constitutional Court of the Russian Federation has indicated in its rulings that detention must only be used when strictly necessary. Furthermore, the author claims that he should have been present during the detention hearings, in accordance with article 108 (4) of the Criminal Procedure Code of the Russian Federation.

3.3 The author further claims that the maximum detention prescribed by the law is 12 months and that since he was arrested on 13 January 2012, he should have been released on 13 January 2013. Instead, the author was kept in unlawful detention until he was extradited on 15 January 2013. The author complained about this fact to the Babushkinsky district court.

State party's observations on admissibility and merits

4.1 In its observations dated 18 April and 23 May 2013, the State party confirms that the author arrived in the Russian Federation on 4 November 2010 and received a temporary residence permit on 14 June 2011. In January 2012, the Prosecutor General's Office of Uzbekistan requested the author's extradition, alleging that he had committed crimes while in Uzbekistan. The Uzbek authorities assured the State party that all criminal proceedings would be carried out in accordance with the laws and international obligations of Uzbekistan, that the author would not face the risk of torture and that he would be able to exercise his right to a lawyer and other procedural rights.[5]

4.2 The author was detained on 13 January 2012 by the 5th branch of the Moscow subway police. On 21 February 2012, he requested that the Russian migration authorities grant him refugee status, but his request was rejected. According to article 1 (1) of the federal law on refugees, which gives a definition of a refugee, a person must have a "well-founded fear" of persecution based on race, religion, citizenship, nationality, belonging to a specific social group or due to political views, and that person must be outside his country of residence and unable to return owing to the concerns mentioned above. The author appealed the decision, but his appeal was rejected on 26 December 2012. That decision was further appealed to the Moscow City Court and was pending at the time of submission of the present observations.

4.3 On 21 September 2012, the Deputy Prosecutor General of the Russian Federation issued a decision to grant the extradition request. The author appealed this decision at the Moscow City Court, which rejected the author's appeal on 12 November 2012. The court stated that the author was not a citizen of the Russian Federation, had not been granted refugee status and was being prosecuted in Uzbekistan for a crime of a general nature, which was not based on discrimination on the basis of race, gender, nationality and so on. The State party has no grounds for not believing the assurances provided by the Uzbek authorities that the author will not be tortured if returned. The author failed to provide any information that would lead the State party to believe that he would be persecuted based on his ethnicity, race, political views and so on.

4.4 The Supreme Court of the Russian Federation, on appeal, came to the same conclusion. On 10 January 2013, the court found that the author was wanted in Uzbekistan for crimes he had allegedly committed in 2008. The author had not filed a supervisory appeal in the Supreme Court and therefore his claims should be considered inadmissible.

4.5 On 14 January 2013, the author filed a complaint to the Babushkinsky district court to the effect that he had been detained for longer than the permissible detention limit of 12

[4] The author refers to a 2009 report by Amnesty International.

[5] The State party does not provide a copy of these documents.

months. On 17 January 2013, the Babushkinsky district court rejected the complaint. That decision was not appealed. The author therefore failed to exhaust the domestic remedies regarding those claims as well.

Author's comments on the State party's observations on admissibility and the merits

5.1 Regarding the issue of the exhaustion of domestic remedies, the author, through counsel, submits that the remedies must be effective to require exhaustion. When a person is ordered to be extradited, such an order becomes effective immediately and the author could have been removed from the Russian Federation at any time. The decision issued by the Supreme Court on 10 January 2013 became enforceable immediately after its issuance, and the author was extradited on 15 January 2013. The supervisory review procedure was therefore not available to the author as an effective remedy.

5.2 As for the assurances that the author would not be tortured if returned to Uzbekistan, he claims that they cannot serve as sufficient means to prevent the risk of torture.

Issues and proceedings before the Committee

Consideration of admissibility

6.1 Before considering any claims contained in a communication, the Human Rights Committee must decide, in accordance with rule 93 of its rules of procedure, whether or not it is admissible under the Optional Protocol.

6.2 The Committee has ascertained, as required under article 5 (2) (a), of the Optional Protocol, that the same matter is not being examined under another procedure of international investigation or settlement.

6.3 The Committee notes the author's arguments under articles 9 and 14 (3) that his overall detention exceeded the one-year maximum period of detention allowed under Russian national legislation. It also notes the State party's claims that the author failed to exhaust the available domestic remedies as he failed to appeal the decision of the Babushkinsky district court dated 17 January 2013 (see para. 4.5 above). In the absence of any pertinent explanation from the author regarding his failure to appeal that decision, the Committee considers that the author has failed to exhaust domestic remedies regarding his term of detention, as required by article 5 (2) (b) and finds his claims inadmissible.

6.4 The Committee has also noted the author's claims that his extradition violated article 7 of the Covenant. It notes the author's submission regarding the occurrence of torture in Uzbekistan. It also notes, however, that the author failed to relate the human rights situation in Uzbekistan to his personal context. In the absence of any further pertinent information on file and relying on information provided by the author, the Committee considers that the author has failed to sufficiently substantiate, for purposes of admissibility, his allegations. Accordingly, it declares his claims under article 7 inadmissible under article 2 of the Optional Protocol.

6.5 Regarding the author's claims that his detention was arbitrary, the Committee notes that the second sentence of paragraph 3 of article 9 requires that the detention in custody of persons awaiting trial shall be the exception rather than the rule. The author, however, failed to make a showing that the determination by the courts of the Russian Federation, including the Supreme Court, that his detention pending extradition was lawful, was arbitrary. In the circumstances as described by the author, the Committee considers that the author has failed to sufficiently substantiate for purposes of admissibility his allegations and finds them inadmissible under article 2 of the Optional Protocol.

7. The Human Rights Committee therefore decides:

(a) That the communication is inadmissible under articles 2 and 5 (2) (b) of the Optional Protocol;

(b) That the decision be transmitted to the State party and to the author.